

Notice of Allowability

Application No.

09/807,657

Applicant(s)

GARCON, NATHALIE

Examiner

Zachariah Lucas

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the papers filed March 24, 2005.
2. ☒ The allowed claim(s) is/are 32-37,39-42,44-46,48-53,55,56,58-62,71,73-82,84-86,88-93,95-97,99-104,106-116,120-125,127,129-131 and 133-141.
3. ☒ The drawings filed on 16 April 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 3-28-05
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 4-8-05.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

Status of the Claims

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on March 24, 2005 has been entered.

2. Claims 32-37, 39-42, 44-46, 48-53, 55, 56, 58-62, 71, 73-82, 84-86, 88-93, 95-97, 99-104, 106-116, 120-125, 127, 129-131, and 133-141 are pending and allowed. In the prior action, the *Ex parte Quayle* action mailed on January 26, 2005, claims 32-37, 39-62, 71-116, and 118-141 were indicated to be allowable, and the specification was objected to. In an amendment accompanying the RCE of March 24, 2005, the Applicant amended claims 32-37, 39-42, 44-46, 48-53, 55, 56, 58--62, 71, 73-82, 84-86, 88-93, 95-97, 99-104, 106-114, 116, 120-124, 127, 129-131, and 133-137; and cancelled claims 43, 47, 54, 57, 72, 83, 87, 94, 98, 105, 118, 119, 126, 128, and 132. Because the amendments to the claims have rendered moot the outstanding objection to the specification, and in view of the amendments below, the application is considered to be in allowable condition.

EXAMINER'S AMENDMENT

Art Unit: 1648

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Reid S. Willis on April 8, 2005.

The application has been amended as follows:

Claims 76 and 109 were also cancelled from the application.

Claim 141 was amended to read as follows:

141. The adjuvant composition of claim 138 wherein the immunostimulatory cytokine is selected from the group consisting of: GM-CSF and IL-1.

The amendments to the claims were made to clarify what is being claimed. Claims 76 and 109 were cancelled as depending from cancelled claims. Claim 141 was amended because the other immunostimulants identified in the list were not immunostimulatory cytokines.

Information Disclosure Statement

4. The information disclosure statement (IDS) submitted on March 24, 2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

Specification

5. **(Prior Objection- Withdrawn)** The specification was objected to as failing to provide proper antecedent basis for claimed subject matter. The specification does not provide any antecedent basis for the claim limitation regarding immunostimulants “wherein the immunostimulant is not a saponin derived from the bark of Quillaja Saponaria Molina.” In view of the cancellation of this limitation from the claim language, the objection to the specification for not providing antecedent basis for the claim language is withdrawn.

Allowable Subject Matter

6. Claims 32-37, 39-42, 44-46, 48-53, 55, 56, 58-62, 71, 73-82, 84-86, 88-93, 95-97, 99-104, 106-116, 120-125, 127, 129-131, and 133-141 are allowed. The subject matter of these claims appears to be free of the prior art. Although the art does teach the combination of the claimed immunostimulants and adjuvants, (see e.g. Hauser et al., U.S. Patent 5,776,468, col. 7, lines 27-39 (of record in the prior action), the art does not specifically teach adjuvant compositions wherein the antigen and immunostimulant are not bound to the same adjuvant molecules. See e.g., Hauser, col. 1, lines 45-53 (teaching that the immunostimulant reacts with the alum/antigen complex to form a single complex comprising all three elements). Claims 123-125 are further allowed on the basis of art-recognized vaccines as disclosed for example in U.S.

Art Unit: 1648

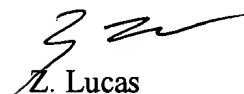
Patents 6,602,697 and 6,869,033. For the reasons above, and the reasons of record, the claims are found allowable.

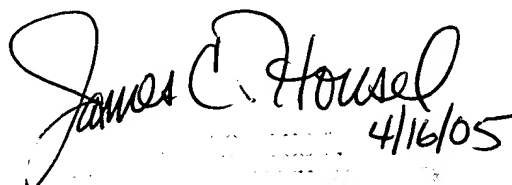
Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Z. Lucas
Patent Examiner


James C. Housel
4/16/05